

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

OUTMEMPHIS, et al.,

Plaintiffs,

v.

BILL LEE, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE, et al.,

Defendants.

Civil Action No. 2:23-CV-2670

Civil Action No. 2:24-CV-2101

Chief Judge Lipman

DECLARATION OF ALEXIS ALVAREZ

I, Alexis Alvarez, declare as follows:

1. I am a lawyer at the Racial Justice Program of the American Civil Liberties Union (ACLU), and I represent Plaintiffs in this matter. I am competent to testify to the matters set forth in this declaration, and if called on by the Court, would do so.
2. Plaintiffs served Plaintiffs' First Requests for Production on Defendants via e-mail on March 26, 2024. Thereafter, the parties conferred regarding the Requests for Production via e-mail.

3. Attached hereto as Exhibit A is a true and correct copy of all emails exchanged between counsel for Plaintiffs and Defendants regarding Plaintiffs' First Requests for Production, between March 26, and May 3, 2024.
4. Attached hereto as Exhibit B is a true and correct copy of a May 2, 2024 letter from Cody Brandon, counsel for Defendants, to Alexis Alvarez, counsel for Plaintiffs.

Executed on May 6, 2024

/s/ Alexis Alvarez

Alexis Alvarez, *pro hac vice*
Equal Justice Works Fellow
ACLU, Racial Justice Program

EXHIBIT A

RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Rachel Meeropol <rmeeropol@aclu.org>

Fri 5/3/2024 3:36 PM

To:John R. Glover <John.Glover@ag.tn.gov>;Alexis Alvarez <alexisa@aclu.org>;Cody N. Brandon <Cody.Brandon@ag.tn.gov>;David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc:Alexis Agathocleous <aAgathocleous@aclu.org>;Lynly Egyes <lynly@transgenderlawcenter.org>;Dale Melchert <dale@transgenderlawcenter.org>;External - Milo <milo@transgenderlawcenter.org>;External - Jeff Prepit <jprepit@aclu-tn.org>;Jon Davidson <JonDavidson@aclu.org>;Stella Yarbrough <syarbrough@aclu-tn.org>

Thank you for sharing your position, JR. We continue to disagree with your legal analysis, so unless you are interested in a compromise – e.g. agreeing to respond to our requests by a date certain pending the Court's ruling on the stay, we don't see anything to be gained by meeting.

Best,
Rachel

From: John R. Glover <John.Glover@ag.tn.gov>
Sent: Thursday, May 2, 2024 5:59 PM
To: Alexis Alvarez <alexisa@aclu.org>; Cody N. Brandon <Cody.Brandon@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

This Message Is From an External Sender

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Alexis,

Please see the attached letter.

Cody and the rest of our team have been tied up with another lawsuit filed by some of your local co-counsel and have not been able to break free the past couple of days. That said, if you'd still like to meet after reading the attached letter, we're still glad to sit down and discuss this issue and have lots of availability next week to do so. Just let us know.

Thanks,

JR

John R. Glover | Assistant Attorney General
Law Enforcement and Special Prosecutions Division

Office of Tennessee Attorney General
 John Sevier Building, 3rd Floor
 P.O. Box 20207, Nashville, Tennessee 37202
 615-253-1103
john.glover@ag.tn.gov



From: Alexis Alvarez <alexisa@aclu.org>
Sent: Wednesday, May 1, 2024 3:06 PM
To: Cody N. Brandon <Cody.BRANDON@ag.tn.gov>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Apologies, I included the wrong case citation. It should be *HRC-Hainan Holding Co., LLC v. Yihan Hu*, No. 19-MC-80277-TSH, 2020 WL 1643786, at *2–3 (N.D. Cal. Apr. 2, 2020).

Alexis Alvarez (she/her)

Equal Justice Works Fellow*
 Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

*Sponsored by the Sidley Austin Foundation and KPMG

From: Alexis Alvarez <alexisa@aclu.org>
Sent: Tuesday, April 30, 2024 7:17 PM
To: Cody N. Brandon <Cody.BRANDON@ag.tn.gov>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Cody,

Our motion to compel will be based on the fact that Defendants failed to respond to Plaintiffs' RFPs within the required time period. The pendency of a motion to stay does not relieve a party from meeting discovery obligations. Unless and until such a motion is granted, a party must meet their obligations. *See, e.g., Ellicott Dredges, LLC v. C.J. Mahan Constr. Co., LLC*, No. CV 14-3557-ELH, 2015 WL 13840884, at *3 (D. Md. Oct. 22, 2015) (collecting cases).

If you'd like to discuss, we are available Wednesday 5/1 at 1 PM or Thursday 5/2 at 10 AM (CT). If neither of those times work for you, we can discuss over email. Otherwise, we would appreciate you sending your position by Friday 5/3 at noon.

Thanks,

Alexis

From: Cody N. Brandon <Cody.Brandon@ag.tn.gov>
Sent: Monday, April 29, 2024 4:56:07 PM
To: Alexis Alvarez <alexisa@aclu.org>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

This Message Is From an External Sender

This message came from outside your organization.

Alexis,

We are happy to confer about your motion to compel. I expect we will oppose the motion, but it would be helpful if you could set out briefly in writing your position so that we can confer productively. That way, if we have failed to consider some authority upon which you intend to rely, we can reevaluate our position and save the Court a hassle. Let me know what dates over the next few weeks are convenient for your team, allowing time for us to consider your position beforehand, and I will check that against our calendars.

Cody

Cody N. Brandon

Managing Attorney

Phone: (615) 532-7400

Email: Cody.BRANDON@AG.TN.GOV



From: Alexis Alvarez <alexisa@aclu.org>

Sent: Monday, April 29, 2024 2:31 PM

To: Cody N. Brandon <Cody.BRANDON@AG.TN.GOV>; John R. Glover <John.Glover@AG.TN.GOV>; David M. Rudolph <David.Rudolph@AG.TN.GOV>

Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>

Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Cody,

We intend to file a motion to compel your responses. Please let us know your position on the motion and/or whether you would like to discuss further before we file.

Alexis Alvarez (she/her)

Equal Justice Works Fellow*
Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

*Sponsored by the Sidley Austin Foundation and KPMG

From: Alexis Alvarez <alexisa@aclu.org>
Sent: Tuesday, April 23, 2024 2:00 PM
To: Cody N. Brandon <Cody.Brandon@ag.tn.gov>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Hi Cody,

We do not agree that the pendency of a motion to stay itself extends the time to respond. If you have any authority to the contrary, please let us know.

Alexis Alvarez (she/her)

Equal Justice Works Fellow*
Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

*Sponsored by the Sidley Austin Foundation and KPMG

From: Cody N. Brandon <Cody.Brandon@ag.tn.gov>
Sent: Tuesday, April 23, 2024 10:01 AM
To: Alexis Alvarez <alexisa@aclu.org>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Alexis,

To follow up on my email yesterday: we understand the Motion to Stay to suspend Defendants' typical 30-day deadline to respond to Plaintiffs' RFPs, which I believe is approaching Thursday. I wanted to confirm you share that understanding before that deadline comes and goes, as it appears likely we will not have a ruling on the Motion by then. Whenever we do get a decision, if the stay is not granted in full, we can work out a new deadline to respond and, as mentioned below, circle back to conferring.

Cody

Cody N. Brandon

Managing Attorney

Phone: (615) 532-7400

Email: Cody.BRANDON@ag.tn.gov



From: Cody N. Brandon
Sent: Monday, April 22, 2024 9:25 AM
To: Alexis Alvarez <alexisa@aclu.org>; John R. Glover <John.Glover@AG.TN.GOV>; David M. Rudolph <David.Rudolph@AG.TN.GOV>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Alexis,

While the Motion to Stay is pending, I do not think it makes any sense to forge ahead with discussions about Plaintiffs' RFPs. We can pick up the conversation when we have resolution of the issues raised in the motion.

Cody

Cody N. Brandon

Managing Attorney

Phone: (615) 532-7400

Email: Cody.BRANDON@ag.tn.gov



From: Alexis Alvarez <alexisa@aclu.org>

Sent: Friday, April 19, 2024 12:28 PM

To: Cody N. Brandon <Cody.BRANDON@ag.tn.gov>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>

Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>

Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Cody,

Circling back on the below. Would you like to propose some times to discuss?

Thanks,

Alexis Alvarez (she/her)

Equal Justice Works Fellow*
Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

*Sponsored by the Sidley Austin Foundation and KPMG

From: Alexis Alvarez <alexisa@aclu.org>
Sent: Wednesday, March 27, 2024 1:32 PM
To: Cody N. Brandon <Cody.Brandon@ag.tn.gov>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: Re: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Sure, we can circle back in a few weeks.

Thanks,

Alexis Alvarez (she/her)

Equal Justice Works Fellow*

Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

*Sponsored by the Sidley Austin Foundation and KPMG

From: Cody N. Brandon <Cody.Brandon@ag.tn.gov>
Sent: Wednesday, March 27, 2024 10:50 AM
To: Alexis Alvarez <alexisa@aclu.org>; John R. Glover <John.Glover@ag.tn.gov>; David M. Rudolph <David.Rudolph@ag.tn.gov>
Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>

<milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson

<JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>

Subject: RE: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Received. We can certainly discuss the use of categorical logs if you have something specific in mind. We will also need to confer about custodians and search terms for ESI at some point. I think it would make sense to just have those conversations together. So, how about we circle back to those in a few weeks when we can talk more concretely about both subjects? If we have objections that we know we can address with you then even before formally serving our responses, we can have some preliminary discussions on those as well.

Cody N. Brandon

Managing Attorney

Phone: (615) 532-7400

Email: Cody.BRANDON@AG.TN.GOV



From: Alexis Alvarez <alexisa@aclu.org>

Sent: Tuesday, March 26, 2024 12:22 PM

To: John R. Glover <John.Glover@AG.TN.GOV>; Cody N. Brandon <Cody.BRANDON@AG.TN.GOV>; David M. Rudolph <David.Rudolph@AG.TN.GOV>

Cc: Rachel Meeropol <rmeeropol@aclu.org>; Alexis Agathocleous <aAgathocleous@aclu.org>; Lynly Egyes <lynly@transgenderlawcenter.org>; Dale Melchert <dale@transgenderlawcenter.org>; External - Milo <milo@transgenderlawcenter.org>; External - Jeff Prepit <jprepit@aclu-tn.org>; Jon Davidson <JonDavidson@aclu.org>; Stella Yarbrough <syarbrough@aclu-tn.org>

Subject: OUTMemphis v. Lee 23cv2670 - Service of Plaintiffs' First Set of Requests for Production

Good afternoon,

Please find attached Plaintiffs' First Set of Requests for Production. A notice of service will be filed shortly. We also would like to discuss the possibility of the parties agreeing to the use of categorical privilege logs. Please let us know if you are open to that approach, and if so, when you would like to confer about that.

Thank you,

Alexis Alvarez (she/her)

Equal Justice Works Fellow*

Racial Justice Program

American Civil Liberties Union

125 Broad St., New York, NY 10004

Cell: 863.255.1928

AlexisA@aclu.org

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EXHIBIT B

STATE OF TENNESSEE

Office of the Attorney General



JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

May 2, 2024

Alexis Alvarez
American Civil Liberties Union
125 Broad Street
New York, NY 10004

Re: *OUTMemphis v. Lee*, No. 2:23-cv-2670 (W.D. Tenn.)
Plaintiffs' Motion to Compel Responses to Written Discovery

Dear Alexis:

Plaintiffs served written discovery requests on all Defendants on March 26, 2024. Defendants moved for a stay, to include a stay of discovery, three days later, on March 29, 2024. As basis for this stay, Defendants asserted both that Governor Lee and General Skrmetti enjoyed sovereign immunity from suit, which includes immunity from discovery, and that proceeding with litigation in light of a recent amendment of Tennessee law that will take effect on July 1, 2024, would involve irrelevant, burdensome, and duplicative discovery. (D.E. 77-1.) I informed you on April 23, 2024, ahead of Defendants' deadline to respond to Plaintiffs' requests, that Defendants would not respond to the requests in light of the objections presented in Defendants' motion. I understand Plaintiffs now intend to move to compel responses and seek Defendants' position, and you have cited a single case from the Northern District of California in support of Plaintiffs' position. *See HRC-Hainan Holding Co., LLC v. Yihan Hu*, No. 19-MC-80277-TSH, 2020 WL 1643786, at *2-3 (N.D. Cal. Apr. 2, 2020).

Defendants maintain that a pending motion to stay is substantial justification for not responding to discovery requests. *Durbin v. C&L Tiling Inc.*, No. 3:18-CV-334-RGJ, 2019 WL 4615409, at *13 (W.D. Ky. Sept. 23, 2019). That is especially true in light of the specific facts of this case. Many courts have recognized that a pending motion to dismiss that would dispose of the entire complaint protects defendants from discovery obligations. *See, e.g., Kolley v. Adult Protective Servs.*, 725 F.3d 581, 587 (6th Cir. 2013) (“A plaintiff is not entitled to discovery before a motion to dismiss, and dismissal under Rule 12(b)(6) helps protect defendants from expending resources on costly discovery for cases that will not survive summary judgment.”). Defendants have not only moved to dismiss all of Plaintiffs' claims, but Defendants have specifically sought a stay of discovery that is justified by more than just the pendency of a motion to dismiss.

Importantly, sovereign immunity also protects the Governor and Attorney General in this case from any discovery obligation. *See United States ex rel. Cutler v. Cigna Corp.*, No. 3:21-CV-00748, 2023 WL 2552340, at *3 (M.D. Tenn. Mar. 3, 2023) (quoting *Everson v. Leis*, 556 F.3d 484, 491 (6th Cir. 2009)) (“[O]ne of the primary purposes of the immunity is to protect the defendant from ‘the rigors of litigation itself, including the potential disruptiveness of discovery.’”). Governor Lee and General Skrmetti have asserted that immunity in both their Motion to Dismiss and the Motion to Stay. In light of this immunity and the specific objections to responding to discovery articulated by all Defendants in the Motion to Stay, Defendants believe they have no obligation to respond until the Court rules on the Motion to Stay.

The district court case you directed us to from California has little, if any, discernible relevance here. The court there had already granted a motion to compel and ordered a party to respond to a subpoena. *HRC-Hainan*, 2020 WL 1643786, at *1. The producing party filed a motion to stay the court’s order the day before their production deadline, citing a pending appeal as justification for the stay. *Id.* No order compelling Defendants to produce discovery has issued in this case. The procedural posture of *HRC-Hanhan* is wholly distinct from the present case, as well as not controlling in the Sixth Circuit. Finally, *HRC-Hanhan* involved a producing party that caused its own delay and thus was unjustified in responding, *id.*, at *3. But Defendants moved for a stay within three days of service of Plaintiffs’ requests.

Defendants remain unpersuaded that they are obliged to respond to Plaintiffs’ requests while their Motion to Stay is pending. Accordingly, Defendants will oppose the motion to compel.

Respectfully,

/s/ Cody N. Brandon
CODY N. BRANDON
Managing Attorney
Senior Assistant Attorney General
Office of the Tennessee
Attorney General and Reporter
PO Box 20207
Nashville, TN 37202
Off. (615) 532-7400
Fax (615) 532-4892
Cody.Brandon@ag.tn.gov

cc: John R. Glover
David M. Rudolph
Rachel Meeropol
Alexis Agathocleous
Lynly Egyes
Dale Melchert
Milo Inglehart
Stella Yarbrough
Jeff Prepit
Lucas Cameron-Vaughn